APPEAL NO. 93042

At a contested case hearing held in (city), Texas, on December 7, 1992, the hearing officer, (hearing officer), determined that respondent (claimant) was injured in the course and scope of her employment on (date of injury), while packing and lifting boxes. Appellant (employer) requests our review under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-6.41 (Vernon Supp. 1993) (1989 Act) and challenges the sufficiency of the evidence to support such determination. Claimant has responded urging our affirmance.

DECISION

Finding sufficient evidence to support the challenged finding and conclusion, we affirm.

Claimant testified that during the morning of Friday, (date of injury), while working as a temporary secretary at a university, she and her coworkers were asked to pack up the content of their desks because the office was being relocated. She packed her desk items including stationery and supplies, and the contents of a file cabinet including cards and files, into 10 boxes, each of which she estimated to weigh between 30 and 50 pounds. She set the boxes on either her desk top or chair, packed them full, closed and labeled them, and then lifted the boxes and carried them a few feet away to stack up against a wall where they were later moved by a moving crew. Once the boxes were stacked up, she picked up each box again in order to affix new labels to them. At the end of the workday, claimant said she felt tired and stiff but did not experience pain. The next morning, however, claimant said pain was very noticeable in her neck and lower back. She did not go to work on Monday and on Tuesday sought medical treatment from Dr. A. In August 1990, claimant had undergone a lumbar laminectomy and diskectomy for a herniated disc at L5-S1, and she related that she had also injured her back in an automobile accident in April 1991. However, she said she had not seen a doctor for her back since June or July 1991, denied any activity after leaving work on April 10th which could have injured her neck and back, and was of the firm opinion that her back pain, which began on April 11th, was the result of the lifting she did on April 10th. She said that she was still under a doctor's care and, pending further testing, may require surgery. Her initial diagnosis on April 16th included "lumbar sprain/strain, low back radicular, and cervicalgia."

Employer's evidence showed that at some time before April 10th, claimant had declined to help a coworker move a typewriter indicating she had to be cautious because of a prior back injury; that claimant appeared happy at the end of the workday on April 10th; that when her husband came to her office on April 13th to have claimant's supervisor sign a time card for her salary, the supervisor inquired (in a 30 second conversation with no details) as to how claimant was doing and her husband related that she had just hurt her back over the weekend and would be fine, and that he would help claimant unpack her boxes; that several coworkers had not seen claimant lift boxes on April 10th or manifest any injury on that day; and that a supervisor who saw claimant enter the doctor's office on April 14th

limping and walking with difficulty, saw her exit the office walking without apparent difficulty until she saw her supervisor. Employer also noted that in two of the four doctor's reports in evidence, the history indicated that claimant experienced the onset of pain on the day of her injury, not on the following day as she testified.

Employer's position at the hearing was that claimant did not meet her burden of proving she sustained a compensable injury on April 10th because her testimony was not credible when contrasted with the inconsistencies raised by employer's evidence. The hearing officer found that claimant sustained an injury on April 10th while lifting and packing boxes at the university while in the furtherance of her employer's business, and concluded that claimant sustained a compensable injury. We view the evidence sufficient to support such finding and conclusion.

Article 8308-6.34(e) provides that the hearing officer is the sole judge not only of the relevance and materiality of the evidence, but also of its weight and credibility. As the trier of fact, the hearing officer resolves conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer may believe all, part, or none of the testimony of a witness (Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.)) and may believe one witness and disbelieve others (Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.)). Though not obligated to accept the testimony of a claimant, an interested witness, at face value (Garza, *supra*), issues of injury and disability may be established by the testimony of a claimant alone. *See e.g.* Texas Workers Compensation Commission Appeal No. 91083, decided January 6, 1992, and Texas Workers' Compensation Commission Appeal No. 92069, decided April 1, 1992. As an interested party, the claimant's testimony only raises an issue of fact for determination by the fact finder. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.- Amarillo, no writ). We do not substitute our judgement for that of the hearing officer where, as here, the challenged finding is supported by sufficient evidence. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865 (Tex. App.-Texarkana 1989, no writ). The challenged finding and conclusion of the hearing officer are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 751 S.W.2d 629 (Tex. 1986).

The decision of the hearing officer is affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge